

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No.: 04-11939-JGD

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MICHAEL J. WHALON,

Plaintiff,

v.

CHRISTY'S OF CAPE COD, LLC,

Defendant.

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**JOINT STATUS REPORT**

The following Joint Status Report is provided per the Order of the Court in anticipation of the Status Conference scheduled for May 17, 2006.

The parties have continued to duct deposition discovery on a regular basis since the last Status Conference. Remaining non-damages depositions may include: one lay, non-medical deposition (Dori Caussey – a former employee of Defendant scheduled for May 16, 2006); and Dr. Geoffrey Gilson and/or Dr. Luydmila Rakita, physicians of Plaintiff). The parties anticipate that these depositions will be completed prior to the end of May; however, a Court Order may be required in order to compel the deposition of Dr. Gilson.

Because the lay depositions have taken longer than expected to schedule, Plaintiff has not designated any experts. The Defendant has designated a medical expert and a potential rebuttal expert, and indicated it may designate an accounting expert, either principal or rebuttal. Since experts will primarily be necessary in this case for the

damage phase, the parties jointly request that the Court defer the designation of experts until after a Motion for Summary Judgment (anticipated to be filed by the Defendant) is filed, heard and decided by the Court. In this manner, neither party will be required to expend the funds for experts, in the event Plaintiff is unable to sustain his liability phase of the case. After the Court issues a decision on the Motion for Summary Judgment, a timetable can be established to designate experts, conduct expert depositions, if any, and schedule a final Pre-Trial conference.

In the event the Court elects to adopt this methodology, a proposed revised Scheduling Order would resemble the following deadlines:

- a. Completion of remaining depositions – May 31, 2006;
- b. Filing of Motion for Summary Judgment by Defendant (liability only) – June 30, 2006;
- c. Plaintiff's filing of Opposition to Defendant's Motion for Summary Judgment – July 31, 2006;
- d. Designation of Plaintiff's experts (if necessary) – 30 days after court ruling on Defendant's Motion for Summary Judgment;
- e. Designation of Defendant's experts – 30 days after Plaintiff's designation of Plaintiff's experts;
- f. Completion of expert depositions – 30 days after Defendant's designation of experts; and
- g. Final Pre-Trial Conference – to be determined by the Court.

The parties have also discussed mediation and, although a date for mediation has not been determined, ideally mediation would occur either at the conclusion of lay

discovery or after the Court rules on Defendant's Motion for Summary Judgment (if Plaintiff prevails at this juncture on the liability phase). In addition, the Court may wish to schedule a further Status Review at a future point, to monitor the status of the ongoing discovery. Both parties have cooperated fully in all aspects of discovery and any delays in accomplishing discovery have been due to either difficulties in locating witnesses or accommodating the schedules of the medical providers.

Regarding settlement, the parties have had some preliminary discussions about settlement; however, at this time, no settlement is imminent.

Respectfully submitted.

For the Plaintiff:

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Dated: May 12, 2006

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Dated: May 12, 2006